IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 5867 of 2004

M/s Barley Products Pvt Ltd.. petitioner

vs

Union of India and ors...respondents

Mr.V.Z.Kankaria for Petitioner

Mr.S.M.Dharap with Mr.A.S.Rao with Dubay for respondent nos.l and 2

CORAM;A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated l8.l0.2004

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l. Heard advocates. Perused the affidavits filed on behalf of the respondents.The challenge in this petition is to the award of tender by respondent no.2 to respondent no. 3 for supply of wheat (‘Ata’) to Zhansi Babina and Gwalior. The challenge is inter aila on the ground that the rates quoted by the petitioner were lower than the

rates of the respondent no.2 and therefore the contract awarded to the respondent no. 2 is illegal . It appears that the value of the contract at the rates quoted by the petitioner was 30.28% lower than the reasonable rates evolved by the Panel of Officers. The petitioner was interviewed by a panel of officers and was asked reasons for quoting such low rates. The explanation given by the petitioner was not convincing and therefore the Panel of Officers rejected the tender being fictitious in terms of para 74 of the Government of India Ministry of Defence letter dated 22.ll.2000. The rationale behind non acceptance of the rates which are more than20% below reasonable rates under para 74 of the Government letter is as follows:

> "i) A contractor bidding rates that are grossly low may not be able to fulfill his contractual obligation.
>
> ii) Department may be saddled with contract that is doomed from the start.
>
> iii) A contractor may resort to malpractice to overcome his losses thereby resulting into quality control problems"

2. The rates quoted by the respondent no. 3 were within the permissible limit of reasonable rates laid down by the panel of officers, the said tender was accepted in terms of para 7l of the Government of India Ministry of Defence letter dated 22.ll.2000.

3. The main contention of Mr Kankaria was that the rates of the petitioner were not lower than the reasonable limit prescribed by the panel of officers. This submission proved to be factually incorrect. In order to ascertain the true position we appointed Shri V.P.Sawant advocate as court commissioner for considering the figures and make report and accordingly a report has been submitted by Mr.Sawant. On reading the report and hearing the learned counsel for the parties we are satisfied that the tender submitted by the petitioner was not within the reasonable limit as per the policy decision of the Government of India and, therefore, the tender was rightly rejected by the respondents. No interference is therefore called for with the decision of the tender committee. Petition is accordingly dismissed.